IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JAIPUR BENCH, JAIPUR.

S.B. Sales Tax Revision Petition No.207/2003

S.P. Packaging, Bharatpur
Vs.
Rajasthan Tax Board and Others

Date of Order :: 25th April, 2007

Hon'ble Dr. Vineet Kothari, J.

Mr.Paras Kuhad for the petitioner.
Mr.R.B. Mathur for the respondent-Revenue.

REPORTABLE

1. The aforesaid revision petition raises a short but interesting question arising under the Rajasthan Sales Tax Exemption Scheme for Industries, 1998 (hereinafter referred to as 'the Incentive Scheme', for short).

2. Whether the investment made by the industry during the operative period of the Scheme for undertaking investment in a phased manner would be entitled to exemption under the Scheme as new industrial undertaking or under the expansion category, if such investment for second or third phase is made within one year of the commencement of commercial production?

3. The petitioner unit was set up to manufacture pet bottles and jars and the commercial production was commenced on 10.11.1999 during the operative period of the Scheme, which came into force on 1.4.1998 and remained in force up to 31.3.2003. The petitioner unit undertook the investment for second phase and in the second phase, it installed plant and machinery for manufacture of pet preforms and caps, which were hitherto purchased from open market as raw material. Thus, by way of backward integration of production line, the petitioner unit started manufacturing such pet preforms and caps so that in house such raw material was readily available for manufacturing pet bottles and jars. For such additional investment made in second phase, the fixed capital investment was enhanced from Rs.56.18 lacs to Rs.64.87 lacs. The petitioner unit applied to District Level Screening Committee (for short 'D.L.S.C.') for grant of eligibility certificate in addition to the eligibility already granted in original investment on 22.02.2001, but applied for grant of such benefit under 'expansion' category as defined in clause 2(g) of the Scheme. The Explanation-I to clause 2(g) of the Scheme requires that benefit of expansion under this Scheme would be available to eligible unit only after they have achieved and actually utilized at least 80% of their installed capacity in an immediately preceding one completed year before making investment on expansion. The Scheme envisages

the expansion category, investment in new industrial unit and in diversification category as eligible investment and to the extent of eligible investment, the exemption from sales tax is granted over a number of years as specified in Annexure-B to the said Scheme, which may go up to 11 years as per the said Annexure-B and the percentage of exemption from sales tax is also specified in Annexure-B of the Scheme.

4. The D.L.S.C. rejected the case of the petitioner unit in its meeting held on 21.6.2002 on the ground that under clause 2(g) of the Scheme dealing with expansion category, the petitioner did not fulfill the requisite condition of achieving 80% of production of the installed capacity as stipulated above. The Tax Board also upheld the decision of the D.L.S.C., hence, this revision petition before this Court.

5. Making the submissions, Mr. Paras Kuhad, learned counsel appearing on behalf of the petitioner unit, urged that the D.L.S.C. has not only fallen into error in not considering the case of the petitioner unit as new industrial undertaking and additional investment made by the petitioner unit in second phase of production by way of backward integration of production line and commencement production of pet preforms by making additional investment during the operative period

of the Scheme within one year of commencement of production by original investment, but has simply in a very pedantic and narrow approach gone by the heading of the application of the petitioner unit, which was by mistake made under clause 2(g) of the Scheme though when the matter was represented before the D.L.S.C. by the authorized representative, they argued before the D.L.S.C. that it was a case of additional investment made for second phase and similar benefits were already given by the D.L.S.C. in another similar case of one M/s. B.R. Oil Mills and since there was no cut off or capping date for making additional investment within one year of commencement of original production and there was no negative stipulation in the incentive scheme prohibiting such additional investment in the second phase and rather the very object of the incentive scheme was to encourage and promote the investment within the State, the benefit of Incentive Scheme could not have been denied to the petitioner unit. He also pointed out that M/s. B.R. Oil Mills had similarly made the application under expansion category under clause 2(g) of the Scheme in contemporary period, yet its case was considered on merits and benefit of exemption was given for such additional investment made in a phased investment by the industry, who are also manufacturing pet bottles besides oil manufactured by them. Taking the count through the relevant extracts of minutes of S.L.S.C. of its meeting held on

25.8.2001, which in detail discussed not only the case of M/s. B.R. Oil Mills but also noticed that the S.L.S.C. in its general decision taken on 27.8.1992 had decided that if a unit implements its project in more than one phase, then it may be allowed benefit of sales tax exemption on the investment made by it on its first phase in the first instance and subsequently the financial limit may be increased after implementation of other phases of the same project but the time limit of the benefit would be unchanged and the total eligible investment should not exceed the original approved project cost. The S.L.S.C. had also decided in its meeting held on 3.2.2001 for the case of M/s. Chrome International Company Ltd., Jaipur to extend its general decision dated 27.8.1992 for the Incentive Schemes of 1987 and 1989 to the present 1998 Scheme also. Thus, following its decision for allowing benefit of exemption Scheme of 1998 where investment is made in a phased manner also, the S.L.S.C. allowed the benefit to M/s. B.R. Oil Mills whereas such benefit was denied to the petitioner unit though its case was similarly situated. Mr. Paras Kuhad thus argued that the revision petition deserves to be allowed and the petitioner unit ought to have been held entitled to exemption to the extent of the additional investment for second phase, which was made within one year of the commencement of original production by making additional investment for backward integration of production line. The factum of eligible

investment made and commencement of the production by such additional investment is not at all in dispute.

6. Mr. R.B. Mathur, the learned counsel appearing for the Revenue, on the other hand, submitted that the D.L.S.C. cannot be faulted because it the petitioner unit, which applied for grant of benefit under clause 2(g) of the Scheme, but apparently did not fulfill the condition of achieving 80% of its installed capacity production within one year. He submitted that the case of the petitioner unit was distinguishable from that of M/s. B.R. Oil Mills and such points of difference were narrated in the impugned order of D.L.S.C. dated 21.6.2002. He also submitted that provisions of the Incentive Scheme have to be strictly construed and, therefore, the petitioner unit was not entitled to the said benefit.

7. Having heard the learned counsels at length and upon perusal of the record, it appears to this Court that the D.L.S.C. as well as Tax Board fell into error in taking a very narrow and conservative view of the matter. Where the very object of the Incentive Scheme is to encourage the industrial investment within the State of Rajasthan and the benefit in the form of sales tax exemption was intended to be given on the basis of quantum of eligible investment made in the

industries, taking an approach like the present-one cannot be justified. Where apparently clause 2(g) says that case of expansion can be considered only after completion of one year of commencement of production, there is no question of applying clause 2(g) of the Scheme to the facts of the present case where the additional investment for second phase was made within one year of the commencement of original production by making additional investment for backward integration of production line. The factum of eligible investment and commencement of the production by such additional investment is not at all in dispute. Assuming for the sake of argument that the application was made with reference to a clause, which could not apply to the industrial unit, the very purpose of giving opportunity of hearing by the D.L.S.C. is defeated. Once it was clarified before them that the unit was claiming the benefit for the second phase of investment and that too when similar benefit has been extended to other similarly situated industries, still going by the clause under which the unit applied and not looking towards other definitions and parameters of the scheme where such benefit could very well be extended to the petitioner unit, indicates the narrow and pedantic approach adopted by the D.L.S.C. in such matters. It is true that parameters of the Incentive Scheme have to be strictly construed and entry point in the Incentive Scheme has to be checked properly as to whether the

eligible investment is really made or not, the production has been commenced during the operative period of Scheme or not, the production does not lie in the negative list of the Scheme etc., but strict interpretation of these parameters does not mean that the appropriate committee has to blindly follow the clauses or sections under which the applications are made forgetting the substance and object of the Scheme. The very fact that the S.L.S.C. had decided to extend the benefit of Incentive Scheme for investment made in phases for which there was no prohibition in the Scheme and rightly so and such benefit was extended to similarly situated unit of M/s. B.R. Oil Mills and this having been brought to the notice of the D.L.S.C. during the course of oral representation in its meeting held on 21.6.2002, yet rejection of the application of the petitioner unit casts a serious doubt on the objectivity of the D.L.S.C. in dealing with the case of the petitioner unit.

8. In view of the aforesaid, the revision petition deserves to be allowed and the same is allowed. The impugned orders of D.L.S.C. dated 21.6.2002 and that of the Tax Board dated 15.9.2003 are set aside and the appropriate Committee/C.T.O. is directed to issue requisite eligibility certificate for additional investment made by the petitioner unit for second phase of investment within a period of four

weeks from today. The benefit already availed by the petitioner unit under this application on the strength of additional investment shall be deemed to have been regularly availed by it and the additional unavailed benefit shall also be allowed to be availed of course within the outer time frame as stipulated in the Scheme in accordance with the provisions of the Scheme.

9. The revision petition is allowed with no order as to costs.

[**Dr. Vineet Kothari**],**J.**

S.S.
Jr.P.A.